

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.626 OF 2005
IN
NOTICE OF MOTION NO.1700 OF 2005
IN
S.C. SUIT NO.1705 OF 2005

Shri Abdul Samad Safi Mohammed .. Appellant.
(Orig. Plaintiff)

V/s.

Smt.Shobhadevi Sadashiv Kadam
& Others .. Respondents.

Mr.J.S. Kini for the Appellants.

Mr.R.M. Pandey for the respondents.

**CORAM : A.S. OKA,
VACATION JUDGE.**

DATED : 12TH MAY, 2005.

P.C. :

1. Admit.

2. The Advocate appearing for the Respondents waives service. By consent taken up for final hearing.

3. The Appeal from Order is preferred by the Original Plaintiffs challenging the order dated April 27, 2005 passed by the Trial Court. The learned Advocate appearing for the Appellant states that by the said order prayer for ad-interim relief has been

rejected. The learned Advocate appearing for the Appellant states that on April 27, 2005, the prayer for ad-interim relief was heard by the learned Trial Judge and was rejected and the only order passed by the learned Trial Judge is on page 37. The said order reads thus :

"The parties have not been able to settle. Deft. waives service. Deft. to file W/s and short A/R."

4. The Advocates appearing for the parties agreed that save and except above order, no other order was passed by the learned Trial Judge. Perusal of the above order shows that the prayer for grant of ad-interim relief made by the Appellant-Plaintiffs is not considered on merits. The only observation made by the learned Trial Judge is that the parties have not been able to settle. The learned Judge, therefore, directed the Respondents to file written statement and short affidavit in reply and has adjourned the notice of motion to June 18, 2005. As the prayer made by the Appellant - Plaintiff for ad-interim relief is not considered on merits, it will be open for the Appellant to apply to the concerned Court for ad-interim relief. If the application is made for ad-interim relief before the

learned Vacation Judge in the Trial Court, the same shall be considered and decided as expeditiously as possible.

5. Hence, I pass the following order :

i) Notwithstanding the order dated April 27, 2005, the Appellant- Plaintiff will be entitled to apply for ad-interim relief before the concerned Vacation Judge of the Trial Court and if such application is made, the same shall be decided by the concerned Judge as expeditiously as possible.

6. It is made clear that the prayer for ad-interim relief will be considered by the learned Trial Judge on its own merits and without being influenced by the earlier order dated April 27, 2005.

7. The appeal is disposed of in above terms with no order as to costs.

8. Parties and the concerned Court to act on authenticated copy of this order.

(A.S. Oka)
Vacation Judge.